

May 17, 2010

Ms. Pamela J. O'Connell
Bureau Chief
State of California Department of Insurance
Market Conduct Division
300 Capitol Mall 16th Floor
Sacramento, CA 95814

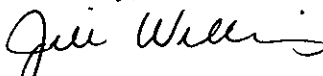
Re: Midland National Life Insurance Company (NAIC # 66004)
Response to the State of California Department of Insurance Public Report of
Target Compliance Examination of the Rating and Underwriting Practices

Dear Ms. O'Connell:

Enclosed please find Midland National's response to the official adopted Market Conduct Report of Examination of Midland National Life Insurance Company as July 31, 2005 (Format 735.5) and the response to the official adopted Market Conduct Report of Examination of Midland National Life Insurance Company as July 31, 2005 (Format 12938).

Please contact me if you need additional information.

Sincerely,



Jill Williams
Assistant Vice President of Compliance
Midland National Life Insurance Company

Enclosures

MIDLAND NATIONAL LIFE INSURANCE COMPANY

NAIC Number 66004

Response to

**REPORT OF TARGET COMPLIANCE EXAMINATION OF
THE RATING AND UNDERWRITING PRACTICES**

Format 12938

MIDLAND NATIONAL LIFE INSURANCE COMPANY

NAIC Number 66004

Response to

**REPORT OF TARGET COMPLIANCE EXAMINATION OF
THE RATING AND UNDERWRITING PRACTICES**

The California Department of Insurance (the "Department"), as a result of its Market Conduct Exam, has labeled as a primary area of non-compliance the "failure to compare replaced and replacing policy contracts to ensure that a substantial financial benefit was conferred to the insured, the use of misleading advertisements, and misleading sales of products that are labeled as 'group' annuities", that allegedly do not meet the definition of group annuity products under the California Insurance Code (the "CIC")." The Market Conduct Exam is limited to sales to seniors (age 65 and older) covering the time period January 1, 2004 through July 1, 2005. Set forth below is Midland National's summary response to each of the alleged areas of non-compliance. Please refer to our previous responses to the positions taken by the Department for further information supporting our position on each of these matters.

GROUP CONTRACTS

The Department has concluded, in part, that the sale of Certificates of Participation in a group insurance trust, with its situs in Iowa, did not, during the exam period, qualify as group annuity products because there was no bona fide group. Premised on the conclusion that there was no bonafide group, sales of Certificates of Participation were found to be contrary to law. Because Midland National did not provide to insureds a copy of the Group Contract or Trust Agreement, did not explain to its agents or its insureds the nature of the relationship between the

Certificates of Participation, the master contract, and the trust organized under Iowa law, and did not train agents regarding Group Contract provisions, the Department concludes that such sales were misleading to consumers.

The Department's findings are not supported by any known or cited precedent, or any known interpretation of the various provisions of the California Insurance Code (CIC), applicable during the period covered by this exam. The Department does not reference a single provision, page or section of the Certificate of Participation concerning all of the terms, conditions, features or benefits of the Group Policy that it claims are misleading. The Department does not provide any explanation of how the sale of certificates is misleading, other than the fact that they are Certificates of Participation as opposed to annuity Policies. Every Certificate of Participation is identical to every policy, of the same contract type, in every respect, other than use of the term Certificate rather than Policy. There is no difference in terms, benefits or application. There is simply nothing misleading about the terminology. The Department has not cited a single instance or allegation that because Certificates of Participation were sold opposed to individual policies, there was a failure to disclose any significant aspect of the annuity purchased including the ability to free look the annuity, surrender charges, surrender periods, premium allocations, and all aspects of the liquidity provisions of the policies. There is no basis in fact or any statement in any Midland National documents to support the Department's conclusions that the sale of group Certificates of Participation in group policies actually misled any policyholder or that the company or its agents failed to disclose all relevant aspects of the annuity policy itself.

Finally, when CIC section 10204.5 became effective January 1, 2006, Midland National designed all annuity contracts as individual contracts, filed those contracts with the Department and delivered individual contracts to California residents who purchased them. There was, prior to this date, no definition of a group annuity contract under California law or any guidance from

the Department regarding the use of a group trust with a situs in another jurisdiction as a basis for marketing group annuity products in California. Furthermore, prior to January 1, 2005, California did not require that fixed index annuities, sold on either an individual or group basis, be filed for approval with the Department.

REPLACEMENTS

With respect to the suitability of replacement annuity sales, the Department concluded that there was “no indication that Midland National Life actually conducted a review to determine if any of its replacement annuity sales are considered unnecessary as defined by CIC Section 10509.8(b).

The Department, in its *Summary of Department’s Evaluation of the Insurers Response*, acknowledges that Midland National had, and continues to have, suitability procedures and disclosure forms in place. The fact stands that Midland did utilize suitability procedures and disclosure forms during the Exam Period. The Department concluded that Midland National simply collects the information and does not act on it. This conclusion was reached without requesting evidence that the company was following its own suitability procedures.

The Department also contends that Midland National cannot support its position that replacement annuity sales accepted by the Company confer a “substantial financial benefit” on the policyholder. The Department simply assumes, without any justification, that deferred annuities are surrendered for cash, and not held for long term growth, or to provide the annuitant a periodic benefit through the annuitization options, or because of other liquidity options. There is no justification for this assumption and the Department does not cite to any authority supporting this view. Further, there is no requirement in California law regarding annuity

replacements that the companies compare account values and cash values as a starting point. California law does not require a side-by-side comparison in instances of replacement.

When purchasing a deferred annuity, cash values are only one of a variety of factors or objectives that are likely to be considered by a purchaser. In many instances, particularly with respect to replacement, purchasers may be looking at the reputation or ratings of the company, allocation alternatives, fixed account interest rates, minimum guaranteed interest rates, other liquidity options, bonuses and payment of death benefits. Few if any of these factors would appear in a simple side-by-side analysis of account and cash values.

The Department has also asserted that an annuity should not be sold to a person whose life expectancy is not greater than the surrender charge period in the contract. The purchase of an annuity contract is an individualized decision dictated by the unique circumstance and objectives of the purchaser. There are several reasons why policyholders may wish to purchase products with surrender periods that exceed their life expectancy. Policyholders may have no immediate need for funds and are purchasing an annuity only as a safe method of preserving funds for their heirs. In addition, if long term growth is the objective, often longer surrender charge products provide the consumer with a higher interest crediting rate. Policyholders may determine that the multiple liquidity provisions of annuity products are more than adequate for their needs regardless of surrender periods. Policyholders may choose an annuity product as a secure method of holding their money regardless of the surrender periods because annuity products typically return a higher percentage of interest than certificates of deposit, and have liquidity provisions as well. Midland National makes every reasonable effort to ensure any purchaser is aware of the surrender charge period. Every purchaser knows his or her own age. If the purchaser makes a conscious, reasoned and informed decision to purchase a contract with a surrender period that may exceed their standard life expectancy, Midland National cannot refuse

to sell that contract. If the disclosure form does indicate a need for funds during the disclosure period, Midland National would either require further information, or the sale would simply not pass Midland National's suitability review.

There is nothing in California laws or regulations that restricts the sale of an annuity to only those with a surrender charge period less than the life expectancy of the annuitant. Midland National cannot be held accountable for violating a duty where no such duty exists.

Riders

The Department is incorrect in suggesting there are shortcomings concerning the Veridian brochure, Form No. 9575Y Rev. 08-06. It includes a clear description of the rider feature consistent with the MNL Leader brochure, Form No. 8934Y Rev. 05-09.

The Guaranteed Income Solution brochure, Form No. 9116Y has been revised and contains a clear description of the rider feature consistent with the MNL Leader brochure, Form No. 8934Y Rev. 05-09.